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U.S. Citizenship
and Immigration
Services

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APR 23 2004

FILE:

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy N. Lomen for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Thailand who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that she: (1) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; (2) is a person of good moral character; and (3) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel states that he is submitting additional information to support the petitioner's claim that she was battered and treated with extreme cruelty by her husband, that she had entered into the marriage in good faith, and that she is a person of good moral character.

8 C.F.R. § 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
- (C) Is residing in the United States;
- (D) Has resided in the United States with the citizen or lawful permanent resident spouse;
- (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
- (F) Is a person of good moral character;
- (G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and
- (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner entered the United States as a visitor on January 9, 1998. The petitioner married her United States citizen spouse on July 5, 1998 at Las Vegas, Nevada. On January 2, 2002, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

PART I

8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi) provides:

[T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. § 204.2(c)(2) provides, in part:

(i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

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(iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

Because the petitioner furnished no evidence to establish that she has met this requirement, she was requested on April 11, 2002, to submit additional evidence. The director reviewed the evidence furnished by the petitioner in response to his request for additional evidence. He noted that the affidavit from her acquaintance verifies that the petitioner and her spouse have resided together. However the affidavit did not indicate that the petitioner had been subjected to battery and/or extreme mental cruelty committed by her spouse. He further noted that the petitioner's self-affidavit was not sufficient, alone, to determine that she had been subjected to domestic violence.

On appeal, counsel resubmits the statement of the petitioner's acquaintance and the petitioner's self-statement previously furnished and addressed by the director. He also submits another statement from the petitioner. The petitioner previously claimed that her husband is very possessive and exhibited serious jealousy, and he did not want her to talk to other people. The petitioner now claims that she was forcefully raped by her husband.

The petitioner raises questions of credibility when asserting a substantially revised claim to eligibility on appeal. This new claim of abuse was not previously addressed by the petitioner and is inconsistent with statements previously made by the petitioner. Only after the application was denied did the petitioner claim that she was raped by her husband. Furthermore, the petitioner failed to submit any supporting evidence to establish this new claim.

The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. § 204.2(c)(2)(i). The petitioner has failed to establish that she was battered by or was the subject of "extreme cruelty" as contemplated by Congress, and to overcome the director's finding pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E). Therefore, the petition must be denied for this reason.

PART II

8 C.F.R. § 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character. Pursuant to 8 C.F.R. § 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or State in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing date of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the three-year period immediately preceding the filing of the self petition.

Because the petitioner furnished no evidence to establish that she has met this requirement, she was requested on April 11, 2002, to submit additional evidence. Furthermore, in his request for additional evidence, the director listed examples of evidence the petitioner may submit to show good moral character. The petitioner, in response, failed to submit any evidence of her good moral character. (The petitioner also did not submit an explanation as to why such documentation is unavailable.)

Although counsel, on appeal, states that he is submitting additional information, no evidence was furnished to establish that the petitioner is a person of good moral character, other than the petitioner's own statement that she has never been arrested and has had no contacts with the police.

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(F), and the petition must also be denied for this reason.

PART III

8 C.F.R. § 204.2(c)(1)(i)(H) requires the petitioner to establish that she entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that she has met this requirement, she was requested on April 11, 2002, to submit additional evidence. The director noted that the petitioner, in response, submitted a copy of her tax return for the year 2000. He determined that this document was not sufficient, alone,

to determine that she married her spouse in good faith. Although the director listed examples of evidence the petitioner may submit to show the existence of a good-faith marriage, the petitioner did not submit an explanation as to why such documentation is unavailable. Furthermore, the document shows that the petitioner filed her taxes as a single person and not married, even though her marriage certificate indicates that she was married on July 5, 1998, and that she did not terminate the marriage until 2001.

Although counsel, on appeal, states that he is submitting additional information, no evidence was furnished to establish that the petitioner married her citizen spouse in good faith.

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H), and the petition also will be denied for this reason.

It is noted that the record of proceeding contains the final judgment of dissolution of marriage between the petitioner and her U.S. citizen spouse effective February 22, 2001. The self-petition was filed on January 2, 2002. Although the divorce of the two parties prior to the filing of the petition is no longer a bar as long as there is a connection between the legal termination of the petitioner's marriage within the past two years and battering or extreme cruelty by her spouse, as noted in Part I above, the petitioner has not established that she met the criteria for battery or extreme cruelty pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E). Therefore, the petitioner is also ineligible under the provisions of 8 C.F.R. § 204.2(c)(1)(i)(A).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.